HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

Writ Petition Nos. 14429, 12804 and 19631 of 2003

Dated: 26.09.2007

W.P.NO. 14429 OF 2003

Between:

M/S Bommana Satya Rajkumar Textiles , Visakhaptnam.

.... PETITIONER

AND

The Visakhapatnam Municipal Corporation rep by its Commissioner, Visakhapatnam.

.....RESPONDENT

W.P.NO. 12804 OF 2003

Between:

M/S Bommana Brothers and Bommana Exclusive a proprietary concern of Bommana Ashwini Kumar S/o Sri Durga Prasada Rao

.... PETITIONER

AND

The Visakhapatnam Municipal Corporation rep by its Commissioner, Visakhapatnam.

.....RESPONDENT

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Writ Petition No. 19631 of 2003

Between:

M.A. Hameed Khan, S/o Late M.F. Khan aged about 49 years Proprietor of M/s Rayamond Shop, Jagadamba Junction, Visakhapatnam.

.... PETITIONER

AND

The Visakhapatnam Municipal Corporation rep by its Commissioner, Visakhapatnam.

.....RESPONDENT

HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

Writ Petition Nos. 14429, 12804 and 19631 of 2003

COMMON JUDGMENT:

As the point involved in all these Writ Petitions is one and the same, they are being disposed of by this Common Judgment.

As all the three Writ Petitions are common as stated above, the facts in W.P.No. 12804 of 2003 are taken into consideration for disposal of these three Writ Petitions.

The petitioner propriety concern is engaged in retail cloth business and it was carrying on business in the first floor as well as in the second floor with different trade licenses. Initially, the respondent-Corporation was collecting Rs. 500/- towards trade licence fee from M/s Bommana

Brothers and Rs. 200/- from Bommana Exclusif. While so, by proceedings No.1597/00/F10 dated 12.2.2001, the Commissioner revised the Trade Licence Fee enhancing the same for readymade garments which is mentioned at item 26 of the schedule appended to the said proceedings at Rs. 480/- up to 10 square metres and Rs. 600/- for every five square meters over and above the said 10 square metres. The said proceedings are purported to have been issued under Section 521 (1)(e)(2) read with Section 622(2) of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act'). It appears that questioning the revision of Trade Licence Fee, a Writ Petition was filed by the association i.e., Visakhapatnam Cloth Merchants Association, but the same was dismissed by this Court. Thereafter, a demand notice was issued in the year 2003 enhancing the trade licence to Rs. 35,280/- and thus directed the petitioner to pay an amount of Rs. 1,05,840/- for the financial years 2001-02, 2002-03 and 2003-04 i.e., for a period of three years. The same is questioned in this Writ Petition.

A counter affidavit is filed on behalf of the respondent admitting the facts and as per the said proceedings the amounts of Rs. 500/- and Rs. 200/- were fixed long ago and there was no revision for a period of 13 years and thus it necessitated the Commissioner i.e., the respondent to revise the amounts towards trade licenses. It is also stated in the counter that the said revision is within the ambit of the Commissioner's powers and it is always open for him to enhance the trade licence etc., whenever there is necessity.

Heard the learned counsel for the petitioners and Sri Ranga Reddy, learned Standing Counsel, appearing on behalf of the respondent.

The bone of contention according to the learned

counsel for the petitioners is that the enhancement from Rs. 500/- to Rs. 35,280/- is wholly excessive and arbitrary. It is also contended that absolutely there were no circumstances warranting the said enhancement as the Municipal Corporation is not providing any extra services and for the same services which it was rendering when it charged only Rs. 500/-, there is no rationale in enhancing the same. It is further contended that without imposing any terms and conditions in respect of a particular trade or operation that is dangerous to life or health or property or that is likely to create nuisance, the Commissioner cannot unilaterally enhance the amount of trade licence. The learned counsel for the petitioners has drawn my attention to the judgment of the Supreme Court in A.P. BANKERS AND PAWN BROKERS ASSOCIATION VS. MUNICIPAL CORPORATION OF HYDERABAD[1].

Per contra, Sri Ranga Reddy, learned Standing Counsel for the respondent, vehemently opposed the said submissions and stated that the amount of Rs. 500/- and Rs. 200/- towards trade licence fee were enhanced from time to time and in the year 1987, the said amounts of Rs. 500/- and Rs. 200/- were fixed and thereafter, there was no revision. According to him, the entire scenario at Visakhapatnam has changed and in the present scenario, it necessitated the Commissioner to enhance it at the rates specified above. It is also contended by the learned standing counsel for the respondent that during the above period, the turnover of the trade i.e., textiles has been increased enormously, and thus, it necessitated to enhance the same and they are appropriate for the period and the present method of fixing the trade licence fee of plinth area is most scientific with sound reasons.

A combined reading of Section 521 and Section 622 of the Act, would reveal that fixing of trade licence fee is within the jurisdiction of the Commissioner i.e., the respondent herein. Section 521 of the Act deals with certain things not to be kept and certain trades and operations not to be carried on, without a licence. Sub Section (1) of Section 521 states that except under and in conformity with the terms and conditions of a licence granted by the Commissioner, no person shall carry on any business mentioned in the subsequent sub-sections. Section 521 (1)(e) deals with certain trades to be carried on, allowed to be carried on in or upon any premises connected with the trades specified in part IV of Schedule 'P'. Part IV Schedule 'P' deals with trades or operations connected with trade, which shall not be carried on, in or upon any premises without a licence and the business of textiles is not one amongst those businesses which are mentioned in Part IV of Schedule 'P'. As carrying on business in those trades mentioned in Part IV of Schedule 'P' are hazardous and dangerous to life, normally certain terms and conditions will be imposed in the trade licenses directing the licensee to follow certain safety measures in the licence itself. In that context, the Supreme Court in the judgment reported in A.P. BANKERS AND PAWN BROKERS ASSOCIATION VS. MUNICIPAL CORPORTION OF HYDERABAD (supra-1) interpreting the words "except under and in conformity with terms and conditions of a licence granted by the Commissioner", held that it therefore, automatically follows that if there are no terms and conditions which can be imposed by the Commissioner or the Municipality in respect of a particular trade or operation, even then if the Commissioner is of the opinion that the trade or operation is dangerous to life or health or property or that it is

likely to create a nuisance, he can regulate or control the trade or operation.

By reading the said words, the learned counsel for the petitioner tried to impress upon the Court stating that the said enhancement or revision of trade licence fee is contrary to Section 521 of the Act. However, in the light of the above discussion, the said contention cannot be accepted.

It is also to be borne in mind that the business, which the petitioners are carrying on, is textiles and there cannot be any terms and conditions and it is only for those trades that are mentioned in Schedule P part IV, it is necessary that the terms and conditions shall be clearly specified. The maxim that can be fixed in the business in trade licence is the area of operation, etc. No doubt , prima facie the enhancement of the trade licence from Rs. 500/- and Rs. 200/- to Rs. 35,280/- appears to be excessive and arbitrary. Any enhancement of the licence fee or trade licence fee must be reasonable and should not result in undue hardship, touching upon the right to carry on trade or profession. But, the fact that the trade licence fee was enhanced to Rs. 500/- in the year 1987 and there was no revision up to the year 2001, gives a totally different picture. Visakhapatnam is one of the major cities in the State of Andhra Pradesh, and in all probabilities, it is next to Hyderabad. The scenario that emerged in the year 1988 when compared to the scenario appearing in the year 2001, it is entirely different. Further, the change in the value of a rupee between the years 1987 and 2001 also is significant. When these facts are taken into consideration, though it appears to be excessive, but in reality, this court is of the view that the enhancement of licence fee cannot be said to be excessive. In fact, in one of the judgments, the Apex Court has taken the view that cent percent enhancement

cannot be said to be arbitrary or excessive. In SECUNDERABAD HYDERABAD HOTEL OWNERS ASSOCIATION AND OTHERS, VS. HYDERABAD MUNICIPAL CORPORATION, HYDERABAD[2], the Supreme Court has observed as follows:

> "Undoubtedly, this expenditure covers not just the services rendered to the trades in question. It also covers services rendered to various other trades, to individuals and organizations and all other members of the public who benefit from such services rendered to various other trades, by the municipal corporation. Nevertheless, looking to the fact that the licence fees collected from only a very small part of the total expenditure incurred by the municipal corporation, we are not inclined to hold levy of these fees as excessive. It is also necessary to note that the impugned increase in 1981 was the first increase after 1972. The High Court has rightly considered that looking to the increase in the cost of the various activities carried on by the Hyderabad Municipal Corporation, doubling of licence fees after nine years cannot be considered as an excessive increase."

No doubt, as contended by the learned counsel for the petitioners, the enhancement of the trade licnence fee is not 100% or double, but it is 70 times. Therefore, this court is unable to come to the conclusion that the said enhancement is arbitrary or excessive. As discussed supra, during the period of 13 years if the value of the rupee in between is taken into consideration, it cannot be said to be arbitrary. Further, it is not as though the Corporation is collecting the fee for some fancy purpose. The said amounts will be utilized by the Corporation for the services rendered to various other

trades, individuals, for over all development of the Corporation, organizations and all other members of the public who get benefited from the services rendered by the Municipal Corporation. But, as the petitioners approached this Court straight away without approaching the respondent Corporation, this court is of the view that the petitioners may be given an opportunity to approach the respondent Corporation. In fact, in SECUNDERABAD HYDERABAD HOTEL OWNERS ASSOCIATION AND OTHERS VS. HYDERABAD MUNICIPAL CORPORATION, HYDERABAD (SUPRA-2), the owners approached the authorities and gave representations stating that the enhancement made in the year 1992, is far excessive and the Municipal Corporation increased the licence fee twice the licence fee charged in 1987. Having considered the aspects of giving the representations and the corporation also considering the representations again revised the licence fee, the Supreme Court held that the enhancement of licence fee is not excessive.

Accordingly, these Writ Petitions are disposed of with a direction to the petitioners to give detailed representations to the respondent-Commissioner, Visakhapatnam Municipal Corporation, within a period of four weeks from the date of receipt of a copy of this order and the respondent-Commissioner may consider those representations and pass appropriate orders thereon, within a period of four weeks thereafter. Till such time, the respondent-Corporation shall not insist upon the payment of the trade licence fee from the petitioners at the enhanced rates. No order as to costs.

GOPALA KRISHNA TAMADA, J.

Date: 26.09.2007
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[1] 2001 (3) ALD 13 (SC)
[2] AIR 1999 SC 635